

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 MARK ANTHONY KENNEDY,

4 Petitioner,
5 v.

6 RONALD E. OLIVER,

7 Respondent.

Case No.: 3:24-cv-00144-ART-CLB

Order Directing Service of Petition
and Setting Briefing Schedule

8 Mark Anthony Kennedy has submitted a 28 U.S.C. § 2254 petition for a
9 writ of habeas corpus. (ECF No. 1.) The Court has reviewed the petition pursuant
10 to Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254 and
11 directs that it be served on Respondents.

12 A petition for federal habeas corpus should include all claims for relief of
13 which Petitioner is aware. If Petitioner fails to include such a claim in his petition,
14 he may be forever barred from seeking federal habeas relief upon that claim. *See*
15 28 U.S.C. §2244(b) (successive petitions). If Petitioner is aware of any claim not
16 included in his petition, he should notify the Court of that as soon as possible,
17 perhaps by means of a motion to amend his petition to add the claim.

18 It is therefore ordered that the Clerk of Court electronically SERVE the
19 petition (ECF No. 1) on Respondents.

20 It is further ordered that the Clerk add Aaron D. Ford, Nevada Attorney
21 General, as counsel for Respondents and provide Respondents an electronic copy
22 of all items previously filed in this case by regenerating the Notice of Electronic
23 Filing to the office of the AG only.

1 It is further ordered that Respondents file a response to the petition,
2 including potentially by motion to dismiss, within **90 days** of service of the
3 petition, with any requests for relief by Petitioner by motion otherwise being
4 subject to the normal briefing schedule under the Local Rules. Any response filed
5 is to comply with the remaining provisions below, which are entered pursuant to
6 Habeas Rule 5.

7 It is further ordered that any procedural defenses raised by Respondents
8 in this case be raised together in a single consolidated motion to dismiss. In
9 other words, the Court does not wish to address any procedural defenses raised
10 herein either in seriatum fashion in multiple successive motions to dismiss or
11 embedded in the answer. Procedural defenses omitted from such motion to
12 dismiss will be subject to potential waiver. Respondents should not file a
13 response in this case that consolidates their procedural defenses, if any, with
14 their response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any
15 unexhausted claims clearly lacking merit. If Respondents do seek dismissal of
16 unexhausted claims under § 2254(b)(2): (a) they will do so within the single
17 motion to dismiss not in the answer; and (b) they will specifically direct their
18 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v.*
19 *Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
20 including exhaustion, should be included with the merits in an answer. All
21 procedural defenses, including exhaustion, instead must be raised by motion to
22 dismiss.

1 It is further ordered that, in any answer filed on the merits, Respondents
2 specifically cite to and address the applicable state court written decision and
3 state court record materials, if any, regarding each claim within the response to
4 that claim.

5 It is further ordered that Petitioner has **45 days** from service of the answer,
6 motion to dismiss, or other response to file a reply or opposition, with any other
7 requests for relief by Respondents by motion otherwise being subject to the
8 normal briefing schedule under the Local Rules.

9 It is further ordered that any additional state court record exhibits filed
10 herein by either Petitioner or Respondents be filed with a separate index of
11 exhibits identifying the exhibits by number. The parties will identify filed
12 CM/ECF attachments by the number and will file each exhibit as a separate
13 attachment.

14 It is further ordered that, at this time, the parties send courtesy copies of
15 **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY** to
16 the Reno Division of this court. Courtesy copies are to be mailed to the Clerk of
17 Court, 400 S. Virginia St., Reno, NV, 89501, and directed to the attention of
18 "Staff Attorney" on the outside of the mailing address label. No further courtesy
19 copies are required unless and until requested by the court.

20 DATED THIS 18th day of April 2024.

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23 ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE